

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN HURST

Plaintiff,

V.

TEXAS AUTO CRUSHER,
MURRAY COUCH, AND NORA COUCH

Defendants

[illegible]

NO. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§1332, 1441, and 1446, Defendants, Nora Couch d/b/a Texas Auto Crusher and Murray Couch (“Couch”) hereby remove this action titled *John Hurst v. Texas Auto Crusher, Murray Couch, and Nora Couch*; Cause 2014-19459 in the 164th Judicial District of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

JURISDICTION AND VENUE

1. This court has original subject matter jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. §201 et seq.
2. Venue lies in this District Court pursuant to 28 U.S.C. §§ 1391(b), (c).

RELATED AND/OR RECENT LITIGATION

3. Couch provides information regarding related litigation as required under Local Rule 5.2. Related litigation to this matter is filed under an action titled *Johnny Hawkins and Antonio Page v. Texas Auto Crusher, Murray Couch, and Nora Couch*;

Cause 2014-28114, in the 55th Judicial District of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

4. Couch provides information regarding recent litigation as required under Local Rule 5.2. On April 3, 2014, the Plaintiff filed an action in the United States District Court for the Southern District of Texas, Houston Division under Case number 4:14-cv-00863, *John Hurst, Johnny Hawkins, and Antonio Page vs. Texas Auto Crushers, Inc., Murray Couch, and Nora Couch*. After Judge Lynn N. Hughes was appointed and an Order for Conference was issued, Plaintiffs dismissed the case on April 8, 2014.

CURRENT STATE COURT ACTION

5. On the same day as the Federal court dismissal, April 8, 2014, Plaintiff John Hurst filed a petition in the Harris County District Court under Cause 2014-19459; *John Hurst v. Texas Auto Crusher, Murray Couch, and Nora Couch*; in the 164th Judicial District of Harris County, Texas. A copy of the petition is attached hereto as **EXHIBIT A-1** and made part hereof.

6. The Federal and state court petitions contain the same allegations and claims, making it appear as though the Plaintiff's may have been forum shopping for the most sympathetic court. In the alternative, it is possible that Plaintiffs are attempting to force the defendant to incur additional attorney's fees by separating the matters into two cases. Plaintiff alleges that he was a non-exempt employee of Texas Auto Crushers, Inc. and Couch and that he was "routinely required to work in excess of 40 hours per workweek." (Exhibit A-1 at ¶ 14)

7. Texas Auto Crushers, Inc. and Couch have been sued for violations of 29 U.S.C. § 201 et. seq. Plaintiff falsely alleges that Defendants "knowingly and willfully failing to pay John Hurst overtime compensation" (*Id.* at ¶ 16) and "in retaliation for

Hurst's opposition to TAC and Couch's violations of the FLSA, TAC and Couch knowingly and willfully terminated Hurst's employment." (*Id.* at ¶ 20)

8. Nora Couch and Murray Couch were served on May 16, 2014 in Cause No. 2014-19459. Unofficial copies of the Affidavits of Service are attached hereto as **EXHIBITS A-2, A-3 and A-4**. Service was attempted upon Texas Auto Crushers, Inc. through Murray Couch. However, Murray Couch is not affiliated with Texas Auto Crushers, Inc. Nora Couch does business as "Texas Auto Crusher," an unincorporated entity. The corporation, Texas Auto Crushers, Inc., is a different and separate entity, unaffiliated with Couch. Couch made an appearance in the state court action by filing its General Denial on June 9, 2014, which is attached hereto as **EXHIBIT A-5**.

9. Couch is filing this Notice of Removal on June 13, 2014. This Notice is thus filed within 30 days after Couch's receipt of service of the Petition and is timely pursuant to 28 U.S.C. § 1446(b).

BASIS FOR REMOVAL

10. Jurisdiction over the subject matter of this case is conferred by 28 U.S.C. § 1331 and 29 U.S.C. §201 *et seq.* under the Fair Labor Standards Act. Because this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. §201 *et seq.*, this action is removable under 28 U.S.C. § 1441.

11. This Notice of Removal is properly filed in the Southern District of Texas because this Court embraces the county in which the state court action is now pending, Harris County District court. 28 U.S.C. § 1441(a).

12. Pursuant to 28 U.S.C. § 1446(d), Couch is filing a copy of this Notice of Removal with the Harris County District Clerk's Office and serving a copy of this Notice on counsel for Plaintiff.

13. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all Defendants agree and consent to this removal.

14. By removing this action to this Court, Couch does not waive any defenses, objections or motions available to it under state or federal law. Couch expressly reserves the right to move for dismissal of the Plaintiff's claims pursuant to Rule 12 of the Federal Rules of Civil Procedure.

INDEX OF ITEMS BEING FILED WITH NOTICE OF REMOVAL

Couch provides the following index of the copies of documents from the state court action as required by 28 U.S.C. § 1446(a) and Local Rule 81 and other matters being filed with this Notice of Removal. Take note that the Harris County District court has not issued a docket sheet or signed any orders.

EXHIBIT	DOCUMENT
A-1	Petition 2014-19459; Hurst v Couch
A-2	Affidavit of Service 2014-19459; Nora Couch
A-3	Affidavit of Service 2014-19459; Murray Couch
A-4	Affidavit of Service 2014-19459; Texas Auto Crushers, Inc.
A-5	General Denial 2014-19459
A-6	Amended Petition 2014-19459; Hurst v Couch
B	List of Attorneys

The names, address and telephone number of counsel for Plaintiff are:

Mr. Scott Newar
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Houston, Texas 77098
Telephone (713) 226-7950

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WHEREFORE, having met all the requirements for removal under 28 U.S.C. §§ 1441 and 1446, including all the jurisdictional requirements of 28 U.S.C. § 1332, Defendants, Murray Couch and Norma Couch d/b/a Texas Auto Crusher, respectfully removes the matter of *John Hurst v. Texas Auto Crusher, Murray Couch, and Nora Couch*; Cause 2014-19459 in the 164th Judicial District of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

/s/ ROBERT R. BURFORD

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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of June, 2014, a true and correct copy of the foregoing document was served via electronic service, first class mail to the last known address, and facsimile to the Plaintiff's Attorney-in-Charge.

Mr. Scott Newar
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Houston, Texas 77098

via facsimile (713) 226-7181

/s/ ROBERT R. BURFORD

Robert R. Burford